

1990

The Application of RICO to International Terrorism

Zvi Joseph

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

Recommended Citation

Zvi Joseph, *The Application of RICO to International Terrorism*, 58 Fordham L. Rev. 1071 (1990).
Available at: <https://ir.lawnet.fordham.edu/flr/vol58/iss5/8>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

THE APPLICATION OF RICO TO INTERNATIONAL TERRORISM

INTRODUCTION

Terrorism¹ has existed for centuries.² A terrorist incident traditionally results in a public outcry for government action to eliminate this scourge.³ There are presently several criminal statutes that can be applied, directly or indirectly, to terrorist organizations,⁴ as well as a

1. Terrorism has been defined as "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine state agents, usually intended to influence an audience." Nathan & Juster, *Law Enforcement Against International Terrorists: Use of the RICO Statute*, 60 U. Colo. L. Rev. 553, 553 n.4 (1989) (quoting Department of State, Patterns of Global Terrorism: 1986, at inside front cover (1988)); see also Report of the New York State Policy Study Group on Terrorism 3 (1985) [hereinafter *New York State Policy Study*] (terrorism is "a tactic or technique by means of which a violent act or the threat thereof is used for the prime purpose of creating overwhelming fear for coercive purposes" (quoting Report of the Task Force on Disorders and Terrorism 3 (1976))).

International terrorism has been defined as violent acts that "occur totally outside the United States, or transcend national boundaries" and are intended "(A) to intimidate or coerce a civilian population; (B) to influence the policy of a government; or] (C) to affect the conduct of a government." 50 U.S.C. § 1801(c) (1982).

2. Although terrorism has existed for centuries, the term terrorist was first coined in the Jacobin era (1793-94). See A. Cassese, *Terrorism, Politics and Law* 1 (1989).

3. For example, in 1985 Palestinian terrorists hijacked an Italian cruise ship, the *Achille Lauro*. In the ensuing drama, the terrorists killed an American citizen, Leon Klinghoffer, and dumped his body overboard. Following the *Achille Lauro* affair, there was a surge of rage against terrorist organizations. See Freedman, *Across the Country, A Sense of Euphoria and Cries for Blood*, N.Y. Times, Oct. 12, 1985, § 1, at 1, col. 4; *Jubilant Justice*, N.Y. Times, Oct. 12, 1985, § 1, at 26, col. 1; *A Moment to Savor*, L.A. Times, Oct. 13, 1985, Part 4, at 4, col. 1. In response to the public outcry, President Reagan dispatched jet fighters to intercept the airplane carrying the terrorists. For a more detailed account and analysis of the *Achille Lauro* incident, see generally, A. Cassese, *supra* note 2.

In general, the United State's response to terrorist incidents has varied. At times it has responded decisively in an effort to deter future terrorist activities. See, e.g., Cannon & Wilson, *Reagan Ready to Act if Libya Is Linked to Berlin Bombing*, Wash. Post, Apr. 10, 1986, § 1, at A1 (considering possible responses to Libya's alleged assistance of terrorist organization that bombed West German discotheque); Wilson & Hoffman, *U.S. Warplanes Bomb Targets in Libya as 'Self-Defense' Against Terrorism*, Wash. Post, Apr. 15, 1986, at A1 (precision bombing of Libya, which allegedly assisted terrorist organization responsible for bombing West German discotheque); Nelson, *U.S. Jets Intercept Plane with Ship Hijackers*, L.A. Times, Oct. 11, 1985, Part 1, at 1, col. 6 (F14 jet-fighters to intercept airplane carrying terrorists who hijacked ship and killed American citizen).

Occasionally, the response has been more passive in nature: imposing economic sanctions. See 31 C.F.R. § 550 (1989); see also Exec. Order No. 12,538 (Nov. 15, 1985) (ordering embargo on Libyan oil); Proclamation No. 5141 (Dec. 22, 1983) (restriction on Libyan oil); Proclamation No. 4907 (Mar. 10, 1982) (same).

4. See, e.g., Omnibus Diplomatic Security & Antiterrorism Act of 1986, Pub. L. No. 99-399, 100 Stat. 853, 896-97 (codified at 18 U.S.C. § 2331 (1988)) (penalties for terrorist acts of murder and assault against U.S. nationals abroad); 18 U.S.C. § 1203 (1988) (confering jurisdiction over, and imposing penalties upon, those who take hostages to influence U.S. government or citizens).

There is also a group of criminal statutes designed to protect specific groups of people

number of international agreements that target terrorism.⁵ In spite of the action taken against international terrorism, however, the number of international terrorist incidents against American targets has increased.⁶

One avenue that has not been greatly explored is the use of the Racketeer Influenced and Corrupt Organizations Act ("RICO")⁷ as a weapon against terrorism. Through RICO, the United States can strike at the organizations that support international terrorism.⁸ Although applying RICO would add to the criminal sanctions available to attack terrorism,⁹ there are fundamental jurisdictional and policy questions which must be addressed before RICO can be applied to international terrorist organizations. These issues include the general applicability of RICO to non-financially motivated enterprises,¹⁰ the use of crimes committed abroad as RICO predicate acts,¹¹ and the ability of the United States to obtain

that can be used indirectly to punish terrorist activity directed against these individuals. See, e.g., 18 U.S.C. § 112 (1988) (penalties for assault on foreign official); *id.* at § 115 (penalties for assault on family members of certain government officials); *id.* at § 351 (penalties for assassination, kidnapping, or assault of member of Congress, Cabinet or Supreme Court Justice); *id.* at § 1114 (penalties for murdering officer or employee of United States); *id.* at § 1116 (penalties for murdering foreign official); *id.* at § 1201(a)(4) (penalties for kidnapping foreign official); *id.* at § 1201(a)(5) (penalties for kidnapping federal officers); *id.* at § 1751 (penalties for assassination, kidnapping, or assault of President, Vice President, or their staff members).

5. See, e.g., Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept. 23, 1971, 24 U.S.T. 565, T.I.A.S. No. 7570, 974 U.N.T.S. 177 (detailing unlawful acts, levels of mutual assistance, jurisdiction, extradition, and other responsibilities); Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 22 U.S.T. 1641, T.I.A.S. No. 7192 (same); Convention on Offenses and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 20 U.S.T. 2941, T.I.A.S. No. 6768, 704 U.N.T.S. 21 (treatment of hijackers and powers of aircraft commanders); Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82 (defining piracy and setting out rules for interception).

6. See Department of State Patterns of Global Terrorism: 1986, reprinted in The 1987 Annual on Terrorism 391 (Y. Alexander & A. Foxman eds. 1989) [hereinafter *Global Terrorism*]; see also Broder, *Terrorism Still Rising, U.S. Expert Says*, L.A. Times, Sept. 28, 1988, Part 1, at 5, col. 4 (terrorist incidents set record in 1988); *Expert Says '88 May Be Record Year for Terrorism*, Wash. Post, Sept. 28, 1988, § 1, at A22 (terrorist incidents set record in 1988 and terrorism against U.S. targets consistently 20 to 25 percent of all incidents).

7. 18 U.S.C. §§ 1961-1968 (1988).

8. See *infra* notes 13-54 and accompanying text.

One commentator noted that the use of RICO against terrorism "presents [RICO's] most innovative face, and its most significant challenge to orthodox notions of criminal law." Lynch, *RICO: The Crime of Being a Criminal, Parts III and IV*, 87 Colum. L. Rev. 920, 932 (1987).

9. RICO would allow the prosecution of organizations operating through criminal terrorist activity and would subject those organizations to various criminal penalties including asset forfeiture, a remedy not available in traditional anti-terrorism statutes. This would enable the United States to curtail the funds available to international terrorist organizations. See *infra* notes 87-97 and accompanying text.

10. See *infra* notes 22-27 and accompanying text.

11. The term "predicate act" is the informal name used to refer to those crimes which are statutorily defined as racketeering activity. See, e.g., *United States v. Pepe*, 747 F.2d 632, 645-46 (11th Cir. 1984) (extortion, collection of unlawful debt and violation of

the forfeiture of assets abroad.¹²

Part I of this Note discusses RICO and its applicability to non-financially motivated enterprises. Part II of this Note addresses the problems of applying RICO to international terrorism and advocates the use of extraterritorial predicate acts in RICO prosecutions. Part II further suggests that the federal government may use state law crimes committed abroad as predicate acts in RICO prosecutions. This section also discusses the utility of recently ratified Mutual Legal Assistance treaties in effecting forfeiture of these organizations' assets abroad. This Note concludes that RICO's unique characteristics suggest that it should be used as a weapon against international terrorist organizations.

I. RICO'S APPLICABILITY TO NON-FINANCIALLY MOTIVATED ENTERPRISES

RICO was enacted as part of the Organized Crime Control Act of 1970.¹³ A RICO prosecution must show that the defendants engaged in

Travel Act called predicate acts); *United States v. Ruggiero*, 726 F.2d 913, 918 (2d Cir.) (conspiracies to murder called predicate acts), *cert. denied*, 469 U.S. 831 (1984).

12. See *infra* notes 87-97 and accompanying text.

13. Pub. L. No. 91-452, 84 Stat. 922 (codified as amended in scattered sections of 18 U.S.C.). The Act states that

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, . . . any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. . . .

(b) It shall be unlawful for any person through a pattern of racketeering activity . . . to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

18 U.S.C. § 1962.

The Act contains criminal penalties, such as twenty years or life imprisonment and forfeiture of any property acquired in violation of section 1962, *see id.* at § 1963, and civil remedies, such as awarding treble damages, costs, and attorney fees to persons injured in business or property. *See id.* at § 1964.

This Note will not address the use of RICO's civil remedies against international terrorism. It will, however, use precedents and principles developed in civil RICO litigation to aid in analyzing RICO's applicability to international terrorism. Courts generally agree that precedents developed in civil RICO litigation can be applied to criminal RICO. *See, e.g., Tafflin v. Levitt*, 110 S. Ct. 792, 800 (1990) (new interpretations of civil RICO may disrupt criminal RICO uniformity) (White, J., concurring); *McLendon v. Continental Group, Inc.*, 602 F. Supp. 1492, 1511 (D.N.J. 1985) (citing both civil and criminal RICO cases as supporting precedent); *Kimmel v. Peterson*, 565 F. Supp. 476, 491 n.17 (E.D. Pa. 1983) (criminal and civil RICO decisions should be given similar precedential import).

a "pattern of racketeering activity"¹⁴ and derived income from those activities that was used to operate, maintain, or acquire an interest in an "enterprise"¹⁵ that affects interstate or foreign commerce.¹⁶ RICO also makes it unlawful to conduct or participate in an enterprise that affects interstate or foreign commerce "through" a pattern of racketeering activity.¹⁷

With rare exceptions,¹⁸ international terrorism is perpetrated by individuals and organizations with some social or political motivation. To such organizations, "[t]he ultimate goal of the crime [is] not riches, it [is] revolution."¹⁹ Some courts have concluded that a RICO violation requires economic motivation;²⁰ therefore, this "ultimate goal" may limit

14. "[R]acketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, . . . chargeable under State law and punishable by imprisonment for more than one year . . . 18 U.S.C. § 1961 (1988). In addition to these state law crimes, there are a variety of federal crimes that are also RICO predicates. See, e.g., *id.* at § 1951 (Hobbs Act, prohibiting extortionate or violent interference with commerce); *id.* at § 1952 (Travel Act, prohibiting travel to commit crimes); see also *United States v. Pepe*, 747 F.2d 632, 645-46 (11th Cir. 1984) (extortion, collection of unlawful debt and violation of Travel Act as RICO predicates).

The definition of "pattern of racketeering activity" was recently discussed by the Supreme Court in *H.J., Inc. v. Northwestern Bell Tel. Co.*, 109 S. Ct. 2893 (1989). The Court held that a pattern of racketeering requires at least two criminal acts demonstrating some level of continuity and threat of future criminal action. See *id.* at 2898-902; see also *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n.14 (1985) ("[it is] continuity plus relationship which combines to produce a pattern" (quoting S. Rep. No. 91-617, at 158 (1969) (emphasis added by court))).

15. "[E]nterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4) (1988).

The "enterprise" required by RICO is not limited to legitimate enterprises. Any enterprise, even those which are criminal in nature, can fulfill the "enterprise" requirement of section 1962. See *United States v. Turkette*, 452 U.S. 576, 580-81 (1981); *United States v. Blackwood*, 768 F.2d 131, 137 (7th Cir.), *cert. denied*, 474 U.S. 1020 (1985).

Existence of a continuing core of personnel motivated by a common interest is sufficient to constitute an association-in-fact RICO enterprise. See *United States v. Perholtz*, 842 F.2d 343, 352-53 (D.C. Cir.), *cert. denied*, 109 S. Ct. 65 (1988).

16. See 18 U.S.C. § 1962 (1988). See generally Tarlow, *Rico: The New Darling of the Prosecutor's Nursery*, 49 Fordham L. Rev. 165, 180-83 (1980) (discussion of elements of RICO).

17. See 18 U.S.C. § 1962(c) (1988).

Sections 1962(a) and 1962(b) prohibit subsequently investing proceeds of racketeering activities in an external enterprise. To violate section 1962(c), however, the defendants' acts of racketeering are committed as part of their involvement in an enterprise. See *United States v. Jannotti*, 729 F.2d 213, 226 (3d Cir.) ("through" means that defendant is enabled to commit predicate offenses by virtue of involvement in an enterprise), *cert. denied*, 469 U.S. 880 (1984); *United States v. Cauble*, 706 F.2d 1322, 1331-33 (5th Cir. 1983) ("through" means position in enterprise facilitated commission of predicate acts), *cert. denied*, 465 U.S. 1005 (1984).

18. See, e.g., *Car Bomb Kills 16 in Columbia*, Chi. Trib., Apr. 12, 1990, at 3 (renewal of bombing spree to protect drug related economic interest); *Columbia Says Bomb Led to Crash Last Month of Plane Carrying 107*, N.Y. Times, Dec. 6, 1989, at A12, col. 3 (same).

19. *New York State Policy Study*, *supra* note 1, at 5.

20. See *United States v. Ferguson*, 758 F.2d 843, 853 (2d Cir.), *cert. denied*, 474 U.S. 841 (1985); *United States v. Bagaric*, 706 F.2d 42, 53 (2d Cir.), *cert. denied*, 464 U.S. 840

the applicability of RICO to most international terrorist organizations.²¹ An initial issue which must be resolved, then, is whether RICO can be applied to non-financially motivated organizations.

A. RICO and Economic Motivation

In 1983, the Court of Appeals for the Second Circuit limited the use of RICO against non-financially motivated organizations and thus restricted its potential application to non-financially motivated international terrorism.

In a trio of cases,²² the Second Circuit held that a RICO enterprise requires a financial purpose²³ and that RICO cannot be applied to a group lacking a demonstrable financial motivation.²⁴ The Second Circuit did not require that the financial motivation be the primary motivating factor of the enterprise; rather, "[t]here must merely be 'some financial purpose,' . . . either to the criminal enterprise or the [predicate acts]."²⁵ The basis for the Second Circuit's interpretation was the perception that RICO was created to remedy a specific "mischief," and an enterprise, "when unaccompanied by any financial motive . . . is beyond [RICO's]

(1983); *United States v. Ivic*, 700 F.2d 51, 61 (2d. Cir. 1983); *United States v. Anderson*, 626 F.2d 1358, 1372 (8th Cir. 1980), *cert. denied*, 450 U.S. 912 (1981).

21. See *Ivic*, 700 F.2d at 61. But see *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342, 1349 n.7 (3d Cir.) (evidence of financial motive unnecessary), *cert. denied*, 110 S. Ct. 261 (1989); *Feminist Women's Health Center v. Roberts*, No. C86-161(V)D (W.D. Wash. Mar. 11, 1988) (LEXIS, Genfed library, Courts file) (no dismissal of RICO action for lack of financial purpose).

22. See *United States v. Ferguson*, 758 F.2d 843, 853 (2d Cir.), *cert. denied*, 474 U.S. 841 (1985); *United States v. Bagaric*, 706 F.2d 42 (2d Cir.), *cert. denied*, 464 U.S. 840 (1983); *United States v. Ivic*, 700 F.2d 51 (2d Cir. 1983).

In *Ivic*, the Second Circuit held that RICO did not apply to a group of terrorists that had no demonstrable financial motive. See *Ivic*, 700 F.2d at 65. A few months later in *Bagaric*, the court refused to apply the *Ivic* court's language literally and instead only required that "some" financial purpose be shown. See *Bagaric*, 706 F.2d at 55. In *Ferguson*, the most recent Second Circuit case to address the issue, the court held that "[t]here must merely be 'some financial purpose' either to the criminal enterprise or the [predicate] acts [*Ivic*] does not stand for the proposition that there must be a significant economic purpose for RICO to apply." See *Ferguson*, 758 F.2d at 853 (quoting *United States v. Bagaric*, 706 F.2d 42, 55 (2d Cir. 1983) (emphasis in original)).

23. The *Ivic* Court stated that the term 'enterprise' as used in a RICO context refers to a profit making organization. See *Ivic*, 700 F.2d at 60. In *Bagaric*, the court held that the prosecution could "show 'financial purpose' through either the enterprise or the predicate acts of racketeering." *Bagaric*, 706 F.2d at 56. But see *McMonagle*, 868 F.2d at 1349 n.7 (evidence of financial motive unnecessary), *cert. denied*, 110 S. Ct. 261 (1989); *Roberts*, No. C86-161(V)D (no dismissal of RICO action for lack of financial purpose).

24. See *Ivic*, 700 F.2d at 63. In *Bagaric*, however, the defendants had participated in an extortion and terror campaign. See *Bagaric*, 706 F.2d at 46-51. The court, therefore, had no difficulty finding a financial purpose behind the predicate crimes. See *id.* at 57-58. Likewise in *Ferguson*, the court held that members of a politically motivated enterprise, the Black Liberation Army, who financed their movement through a series of robberies and murders, had sufficient economic purpose to uphold a RICO conviction. See *Ferguson*, 758 F.2d at 853.

25. *Ferguson*, 758 F.2d at 853 (quoting *United States v. Bagaric*, 706 F.2d 42, 55 (2d Cir. 1983) (emphasis in original)).

contemplated reach."²⁶ Other courts have also implied that there must be a financial purpose to an enterprise in order to permit application of RICO.²⁷

By refusing to recognize RICO's applicability to non-financially motivated enterprises, the Second Circuit has arguably added a new element of motive.²⁸ As a general rule, unless motive is an element of the crime, evidence of religious, moral, or political beliefs do not exculpate a defendant from liability for criminal actions.²⁹ RICO was drafted using general terms, and although its legislative history is laden with rhetoric concerning organized crime, nowhere does the statute specifically address the issue of motivation.³⁰

Even when motive is not explicitly listed as an element of a crime, a statute may be interpreted to require a particular motive.³¹ This does not mean, however, that in all cases in which a statute prohibits an act using general terms a court should require a particular motive.³² Had Con-

26. *United States v. Ivic*, 700 F.2d 51, 63 (2d Cir. 1983).

27. *See United States v. Flynn*, 852 F.2d 1045, 1052 (8th Cir.), *cert. denied*, 109 S. Ct. 511 (1988); *United States v. Anderson*, 626 F.2d 1358, 1372 (8th Cir. 1980), *cert. denied*, 450 U.S. 912 (1981). *But see* *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342, 1349 n.7 (3d Cir.) (unnecessary to decide whether evidence showed an economic motive "[b]ecause . . . economic motivation is unnecessary."), *cert. denied*, 110 S. Ct. 261 (1989); *Feminist Women's Health Center v. Roberts*, No. C86-161(V)D (W.D. Wash. Mar. 11, 1988) (LEXIS, Genfed library, Courts file) (improper to dismiss RICO action solely for lack of financial motivation).

Although the Second and Third Circuits appear to disagree about whether a RICO enterprise requires financial motivation, the two circuits may not actually be in conflict. The Second Circuit has not addressed the issues presented in *Ivic* in a number of years, during which time the Supreme Court greatly expanded the scope of RICO. *See, e.g., H.J., Inc. v. Northwestern Bell Tel. Co.*, 109 S. Ct. 2893, 2897-906 (1989) (explaining RICO pattern requirement); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 491, 493-96 (1985) (civil RICO action does not require prior racketeering conviction and RICO requires no organized crime nexus). In fact, the Second Circuit itself had begun limiting the scope of the *Ivic* decision prior to the Supreme Court decisions. It may be that the Third Circuit's position is merely the final step in the Second Circuit's decisions limiting *Ivic*. *Ivic*, however, is still good law in the Second Circuit. It will therefore require affirmative action by the Second Circuit to resolve this issue.

28. *See infra* notes 33-54 and accompanying text.

29. *See United States v. Cullen*, 454 F.2d 386, 390 (7th Cir. 1971); *United States v. Boardman*, 419 F.2d 110, 113-16 (1st Cir. 1969), *cert. denied*, 397 U.S. 991 (1970); *see also* *Standard Sanitary Mfg. Co. v. United States*, 226 U.S. 20, 29 (1912) (good motive not factor); Note, *Motive as an Essential Element of Crime*, 35 Dick. L. Rev. 105, 109-10 (1931) (motive generally not factor unless explicit in statute).

One of the rationales behind this rule is that

[i]f a religious, moral, or political purpose may exculpate illegal behavior, one might commit bigamy to avoid eternal damnation; steal from the rich to give alms to the poor; burn and destroy . . . to implement a Utopian design.

One who elects to serve mankind by taking the law into his own hands thereby demonstrates his conviction that his own ability to determine policy is superior to democratic decision making.

Cullen, 454 F.2d at 392.

30. *See* 18 U.S.C. §§ 1961-1968 (1988).

31. *See* Note, *supra* note 29, at 114-15.

32. *See id.* In deciding whether to interpret RICO to require an economic motive,

gress intended to limit RICO to financially motivated associations, it could have done so by inserting the words "economically motivated" into the statute.³³

Congress did not choose to limit the scope of RICO in such a restrictive manner. Although congressional intent in enacting the Organized Crime Control Act of 1970 was to "seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime,"³⁴ that was not its sole purpose.³⁵ Congress was creating a generic statute capable of encapsulating any criminal behavior that mimicked "organized crime."³⁶ Senator McClellan, who introduced the Organized Crime Control Act, emphasized that RICO did not merely attack organized crime. He observed that "[i]t is impossible to draw an effective statute which reaches most of the commercial activities of organized crime, yet does not include offenses commonly committed by persons outside organized crime as well."³⁷ To effectuate this purpose, Congress enacted RICO as a general intent statute without an explicit mens rea or motive³⁸ and insisted that the entire Act "be liberally construed to effectuate its remedial purposes."³⁹

courts must not consider a statutorily "unmanifested legislative state of mind. . . . The purpose which a court must effectuate is not that which Congress should have enacted, or would have. It is that which it did enact, however ineptly." Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 539 (1947).

33. Cf. *United States v. Turkette*, 452 U.S. 576, 581 (1981) ("Had Congress not intended to reach criminal associations, it could easily have narrowed the sweep of the definition by inserting a single word, 'legitimate.'").

34. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 923 (codified as amended in scattered sections of 18 U.S.C.) (Statement of Findings and Purpose); see also 135 Cong. Rec. S1652 (daily ed. Feb. 23, 1989) (statements of Senator DeConcini) (commenting that purpose of RICO was to eradicate organized crime).

35. RICO was enacted to combat "highly sophisticated diversified and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption" Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (1970) (codified as amended in scattered sections of 18 U.S.C.).

"Organized crime" was merely the catch-all description for various forms of group criminality. See 116 Cong. Rec. 18913 (1970) (statement of Senator McClellan); see also G. Blakey, *Materials on RICO: Criminal Overview*, in 1 *Techniques in the Investigation and Prosecution of Organized Crime* 4 (1980) (RICO applies to violent offenses generally).

36. See 116 Cong. Rec. 18,940 (1970).

37. *Id.*

38. See 18 U.S.C. §§ 1961-1968 (1988); Kolen, *RICO and State of Mind*, in 3 *Techniques in the Investigation and Prosecution of Organized Crime* 1304 (1980).

39. Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 904, 84 Stat. 947; see also *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 498 (1985) (limiting RICO improper because of its expansive language and liberal construction clause); *United States v. Turkette*, 452 U.S. 576, 587 (1981) (judiciary's unwillingness to construe strictly RICO direct result of liberal construction clause).

Courts have recognized that RICO is to be applied broadly.⁴⁰ In the years since its enactment, RICO has been used in a variety of situations, many of which appear to differ from Congress' stated purpose of combating organized crime.⁴¹ RICO has been used in cases involving an unfair discharge,⁴² employment discrimination, sexual discrimination and harassment,⁴³ employment contracts,⁴⁴ anti-abortion protests,⁴⁵ matrimonial disputes,⁴⁶ and the administration of personal estates.⁴⁷ Accordingly, the activities of terrorist organizations, traditionally not considered "organized crime," nonetheless appear to fit within the orbit of the behavior RICO was designed to combat.

A second argument supporting the application of RICO to organizations lacking financial motivation is based upon recent congressional action. Congress has proposed to expand RICO's power in the realm of international terrorism⁴⁸ by adding terrorist acts abroad⁴⁹ and hostage-taking⁵⁰ to the list of RICO predicates. The Second Circuit has posited that Congress' original intent in enacting RICO was to require economic motivation.⁵¹ Nowhere in the RICO Reform Act of 1989 have its draft-

40. See, e.g., *H.J. Inc. v. Northwestern Bell Tel. Co.*, 109 S. Ct. 2893, 2904 (1989) ("Congress knew what it was doing when it adopted commodious language capable of extending beyond organized crime."); *R.A.G.S. Couture, Inc. v. Hyatt*, 774 F.2d 1350, 1355 (5th Cir. 1985) ("The scope of the civil RICO statute is breathtaking . . . but it is not for this court to question policies decided by Congress.").

41. See *infra* notes 42-47 and accompanying text.

Criminal RICO has also been tacked onto ordinary state law crimes with no nexus to organized crime. See *United States v. Aleman*, 609 F.2d 298, 301-06 (7th Cir. 1979) (robbery), *cert. denied*, 445 U.S. 946 (1980); see also *United States v. Nerone*, 563 F.2d 836, 854-55 (7th Cir. 1977) (RICO tacked onto illegal gambling but charge later dropped for lack of effect on interstate commerce), *cert. denied*, 435 U.S. 951 (1978).

42. See *Williams v. Hall*, 683 F. Supp. 639, 640 (E.D. Ky. 1988).

43. See *Hunt v. Weatherbee*, 626 F. Supp. 1097, 1098 (D. Mass. 1986).

44. See *Slattery v. Costello*, 586 F. Supp. 162, 163 (D.D.C. 1983).

45. See *Northeast Women's Center v. McMonagle*, 665 F. Supp. 1147, 1150 (E.D. Pa. 1987), *aff'd in part*, 868 F.2d 1342 (3d Cir.), *cert. denied*, 110 S. Ct. 261 (1989).

46. See *Alton v. Alton*, No. 82 Civ. 0795, slip op. (S.D.N.Y. July 9, 1982).

47. See *Gunther v. Dinger*, 547 F. Supp. 25, 26 (S.D.N.Y. 1982).

48. In February 1989, the RICO Reform Act of 1989 was introduced in the House and the Senate. See S. 438, 101st Cong., 1st Sess., 135 Cong. Rec. S1652 (daily ed. Feb. 23, 1989); H.R. 1046, 101st Cong., 1st Sess., 135 Cong. Rec. H368 (daily ed. Feb. 22, 1989).

The purpose of this Act was to "curtail[] the abuses of RICO in the area of garden-variety litigation" and "enhance significantly the flexibility of RICO to respond to different manifestations of organized crime." 135 Cong. Rec. S1656 (daily ed. Feb. 23, 1989) (statement of Senator Hatch).

49. See 18 U.S.C. § 2331 (1988). Section 2331 of Title 18, allows for the prosecution of crimes of physical violence against United States nationals abroad that were "intended to coerce, intimidate, or retaliate against a government or a civilian population." 18 U.S.C. § 2331(e) (1988).

50. See 18 U.S.C. § 1203 (1988). Section 1203 of Title 18, makes it a crime to hold a person hostage, either in the United States or abroad. To violate section 1203, either the hostage or his captor must be a national of the United States. If only the hostage is a United States national, the kidnapper must be "found" in the United States or have sought by his actions to coerce the United States government in order to be prosecuted.

51. See *supra* notes 22-27 and accompanying text.

ers included a provision explicitly removing economic motivation as an element of a RICO prosecution. At the same time, however, they have implicitly recognized the possible non-economic applications of RICO by including these predicates.⁵² It can be inferred, therefore, that if the drafters of the RICO Reform Act believed that Congress intended that all RICO enterprise be economically motivated, they would not add non-economically motivated crimes⁵³ as RICO predicates.⁵⁴ Therefore, it is arguable that Congress is attempting to solidify RICO's applicability to non-financially motivated terrorist organizations.

II. RICO PREDICATES ABROAD

International terrorist activity occurs outside the territorial boundaries of the United States.⁵⁵ Once it is established that RICO can be applied to non-financially motivated activities, it must then be determined whether RICO can be expanded extraterritorially.

A. Federal Predicates

Among the federal statutes which, if violated, can serve as RICO predicates, the Hobbs Act⁵⁶ and the Travel Act⁵⁷ address conduct characteristic of international terrorist activity. The Hobbs Act can be violated by "[w]hoever in any way or degree obstructs, delays, or affects commerce . . . by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section."⁵⁸ The Hobbs Act has been construed to include all commerce which Congress has the constitutional ability to regulate, including interstate and foreign commerce.⁵⁹ Therefore, hijacking an aircraft or other vessel appears to violate both prongs of the Hobbs Act. First, a hijacking may qualify as extortion, because the hijackers take property, the aircraft, by means of actual or threatened force.⁶⁰ The delay of passengers and cargo occasioned by the hijacking is sufficient to satisfy the requirement of an effect

52. See S. 438, 101st Cong., 1st Sess., 135 Cong. Rec. S1652 (daily ed. Feb. 23, 1989); H.R. 1046, 101st Cong., 1st Sess., 135 Cong. Rec. H368, (daily ed. Feb. 22, 1989).

53. It is clear that the violent acts which are the subject of section 2331 are identical in character to those committed by the *Ivic* defendants. Compare *United States v. Ivic*, 700 F.2d 51, 53-55 (2d Cir. 1983) (conspiracy to murder and attempts to use explosives) with 18 U.S.C. § 2331 (1988) (penalties for conspiring to, or actually committing, murder, manslaughter or other physical violence).

54. The drafters of the RICO Reform Act were undoubtedly aware of the Second Circuit's limitation on non-financially motivated enterprises. See 134 Cong. Rec. E2770, E2772-73 (daily ed. Aug. 11, 1988) (*Hate Crimes and RICO Reform*).

55. See *supra* note 1.

56. 18 U.S.C. § 1951 (1988).

57. *Id.* at § 1952.

58. *Id.* at § 1951(a).

59. See *Stirone v. United States*, 361 U.S. 212, 215 (1960); Nathan & Juster, *supra* note 1, at 555.

60. See Nathan & Juster, *supra* note 1, at 555-56.

on interstate commerce.⁶¹ Extortion could also be shown by a demand for ransom from the United States. The hijackers satisfy the second prong of the Hobbs Act by committing or threatening physical violence to people or property in furtherance of a plan to obstruct and delay commerce by extortion.⁶²

The Travel Act may be violated by whoever travels, in interstate or foreign commerce, to "commit any crime of violence to further any unlawful activity."⁶³ Traveling on an American carrier for the purpose of hijacking it would be a violation of section 1952. Both these Acts can be applied extraterritorially when the criminal activity affects foreign commerce.⁶⁴ Thus, it can be argued that terrorist activity abroad that can be characterized as one of these federal predicate acts can be used in a RICO prosecution.⁶⁵

B. State Law Predicates

In addition to the federal predicate acts, RICO includes a number of state law predicate acts,⁶⁶ each of which must be "chargeable under State law."⁶⁷ RICO defendants have argued that states must actually be able to prosecute the offense for it to be chargeable under state law.⁶⁸ Courts faced with this argument have held that RICO's incorporation of state crimes is merely definitional and is not meant to incorporate state procedural law.⁶⁹ Therefore, they have interpreted the "chargeable under state law" provision to require that the defendant have committed an act characteristic of a State law crime.⁷⁰

Criminal jurisdiction is composed of two parts, one substantive and the other procedural. The substantive aspect deals with the ability of

61. See *United States v. Shackelford*, 494 F.2d 67, 75-76 (9th Cir.), *cert. denied*, 417 U.S. 934 (1974).

62. See *Nathan & Juster*, *supra* note 1, at 556 & n.15.

63. 18 U.S.C. § 1952(a)(2) (1988).

64. See *United States v. Betancourt*, 838 F.2d 168, 174-76 (6th Cir.), *cert. denied*, 486 U.S. 1013 (1988); *United States v. Wander*, 601 F.2d 1251, 1255-56 (3d Cir. 1979).

65. See *United States v. Parness*, 503 F.2d 430, 438-40 (2d Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975).

66. See 18 U.S.C. § 1961 (1988).

67. *Id.* at § 1961(1).

68. See *United States v. Muskovsky*, 863 F.2d 1319, 1321 (7th Cir. 1988), *cert. denied*, 109 S. Ct. 1345 (1989); *United States v. Paone*, 782 F.2d 386, 393 (2d Cir. 1986), *cert. denied*, 483 U.S. 1019 (1987); *United States v. Qaoud*, 777 F.2d 1105, 1118 (6th Cir. 1985), *cert. denied*, 475 U.S. 1098 (1986); *United States v. Licavoli*, 725 F.2d 1040, 1045 (6th Cir.), *cert. denied*, 467 U.S. 1252 (1984).

69. See *Muskovsky*, 863 F.2d at 1331; *Paone*, 782 F.2d at 393; *Qaoud*, 777 F.2d at 1118; *Licavoli*, 725 F.2d at 1046-47.

70. See *Muskovsky*, 863 F.2d at 1331; *Paone*, 782 F.2d at 393; *Qaoud*, 777 F.2d at 1118; *Licavoli*, 725 F.2d at 1046-47; *United States v. Frumento*, 563 F.2d 1083, 1087 n.8A (3d Cir. 1977), *cert. denied*, 434 U.S. 1072 (1978); see also *United States v. Bagaric*, 706 F.2d 42, 62-63 (2d Cir.) (RICO's list of state law crimes merely definitional), *cert. denied*, 464 U.S. 840 (1983); *United States v. Salinas*, 564 F.2d 688, 690 (5th Cir. 1977) (same), *cert. denied*, 435 U.S. 951 (1978).

states to criminalize a certain act,⁷¹ while the procedural aspect deals with the ability of courts to enforce criminal law.⁷² Although courts have ruled that procedural bars to state prosecutions do not hinder utilizing an act as a RICO predicate,⁷³ the act itself must still be a substantive crime.⁷⁴ In order for the federal government to incorporate an act that occurs abroad as a predicate in a RICO prosecution, states must have the substantive power to criminalize that extraterritorial behavior through an exercise of jurisdiction.⁷⁵

The extraterritorial jurisdiction a state possesses to criminalize behavior is based on established international law.⁷⁶ One theory of jurisdiction recognized in international law is that of passive personality:

The passive personality principle asserts that a state may apply law — particularly criminal law — to an act committed outside its territory by a person not its national where the victim of the act was its national. The principle . . . is increasingly accepted as applied to terrorist and other organized attacks on a state's nationals.⁷⁷

Traditionally, relying on the common-law limitations on jurisdiction,⁷⁸ states have not allowed their courts to exercise subject matter jurisdiction

71. See W. LaFare & A. Scott, *Criminal Law* § 2.7, at 115 (2d ed. 1986).

72. See *id.*

73. *United States v. Muskovsky*, 863 F.2d 1319, 1331 (7th Cir. 1988), *cert. denied*, 109 S. Ct. 1345 (1989); *United States v. Paone*, 782 F.2d 386, 393 (2d Cir. 1986), *cert. denied*, 483 U.S. 1019 (1987); *United States v. Qaoud*, 777 F.2d 1105, 1118 (6th Cir. 1985), *cert. denied*, 475 U.S. 1098 (1986); *United States v. Licavoli*, 725 F.2d 1040, 1046-47 (6th Cir.), *cert. denied*, 467 U.S. 1252 (1984).

74. See *Muskovsky*, 863 F.2d at 1331; *Paone*, 782 F.2d at 393; *Qaoud*, 777 F.2d at 1118; *Licavoli*, 725 F.2d at 1046-47; *United States v. Frumento*, 563 F.2d 1083, 1087 n.8A (3d Cir. 1977), *cert. denied*, 434 U.S. 1072 (1978).

75. The substantive jurisdiction to punish a crime abroad does not necessarily grant a state prosecutor the actual ability to prosecute an extraterritorial offender. Rather it is a theoretical limit, past which a state cannot extend its laws. As an example, State A has criminalized murder. Substantively the act of murder is a "State A crime" anywhere State A has the "substantive" ability to extend its laws. State A, however, has chosen to limit its courts and not allow prosecution when murder is committed outside its territorial boundaries. This "procedural" limitation would not bar the federal government from incorporating an act of murder which occurred within State A's substantive jurisdictional boundaries even if State A has limited its own courts.

76. See *State v. Miller*, 157 Ariz. 129, 131, 755 P.2d 434, 436 (Ariz. Ct. App. 1988).

In international law, there are five generally accepted bases upon which a country may assert jurisdiction over crimes which occur totally or partially outside their territories. See *United States v. Layton*, 509 F. Supp. 212, 215-16 (N.D. Cal.), *appeal dismissed*, 645 F.2d 681 (9th Cir.), *cert. denied*, 452 U.S. 972 (1981); Abramovsky, *Extraterritorial Jurisdiction: The United States' Unwarranted Attempt to Alter International Law in United States v. Yunis*, 15 Yale J. Int. L. 121 (1990); Note, *Extraterritorial Jurisdiction Over Acts of Terrorism Committed Abroad: Omnibus Diplomatic Security and Antiterrorism Act of 1986*, 72 Cornell L. Rev. 599, 600-01 (1987).

The five principles upon which a country may base its jurisdiction are: territorial, nationality, protective, universal and passive personality. See Abramovsky, *supra*, at 123; Note, *supra*, at 601.

77. Restatement (Third) of the Foreign Relations Law of the United States § 402 comment g (1987).

78. See W. LaFare & A. Scott, *Criminal Law* § 17, at 118 (1972).

over crimes occurring entirely outside their territorial boundaries.⁷⁹ However, based on the Federal government's recent acceptance of the passive personality theory as a basis for federal criminal jurisdiction,⁸⁰ it can be argued that the states now possess the substantive jurisdiction to criminalize behavior abroad. This is because "under our federal system, the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause."⁸¹ States may exercise any basis of legislative jurisdiction recognized in international law and accepted by the federal government.⁸² It may therefore be argued that since states have the ability to exercise jurisdiction concurrent with the federal government, they may now use the passive personality theory as a basis for exercising jurisdiction, thereby invoking a dormant power to punish crimes against their residents that occur abroad.⁸³

States, however, have not given their courts the procedural jurisdictional capabilities to punish these crimes.⁸⁴ Because of the definitional nature of the list of state law crimes,⁸⁵ however, a state limiting its procedural jurisdiction to its territorial boundaries should not preclude the federal government from incorporating violent state law crimes committed against a United States citizen, who is also the resident of a state, as predicate activity in a RICO prosecution. Since the federal government is not limited by the procedural bars that states place on their courts,⁸⁶ it

79. See *Rios v. State*, 733 P.2d 242, 244-49 (Wyo.), cert. denied, 484 U.S. 833 (1987). But see *Strassheim v. Daily*, 221 U.S. 280, 284-85 (1911) ("Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if [the defendant] had been present . . .").

80. Traditionally, the United States did not accept the passive personality theory. See Note, *supra* note 76, at 603. Recently, however, the United States employed this theory as the basis for jurisdiction in the Omnibus Diplomatic Security and Antiterrorism Act of 1986, Pub. L. No. 99-399, 100 Stat. 853, 896-97 (codified at 18 U.S.C. § 2331 (1988)). See generally Note, *supra* note 76, *passim* (discussing theories of jurisdiction applicable to Act).

81. *Tafflin v. Levitt*, 110 S. Ct. 792, 795 (1990).

82. See *State v. Miller*, 157 Ariz. 129, 131, 755 P.2d 434, 436 (Ariz. Ct. App. 1988).

83. Justice Cardozo, while on the New York State Court of Appeals, acknowledged the power of a state to criminalize extraterritorial activity. In *People v. Werblow*, 241 N.Y. 55, 148 N.E. 786 (1925), he stated that his construction of a statute as not criminalizing activity which occurred abroad "[did] not mean that this construction . . . [was] the consequence of some inherent limitation upon the power of the Legislature," but rather that state criminal statutes criminalizing murder abroad "may come to pass," and "[w]hen they come, they will establish new landmarks of criminal jurisdiction". *Id.* at 61-62, 148 N.E. 789; cf. W. Lafave & A. Scott, *Criminal Law* § 2.9(c)(1), at 136 (2d ed. 1986) (states have jurisdiction equal to nations and have jurisdictional limitations equal to nations).

84. See, e.g., N.Y. Crim. Proc. Law § 20.20 (McKinney 1981) (limiting jurisdiction to acts within state or having effect within state); N.J. Rev. Stat. § 2C:1-3 (1987) (limiting jurisdiction to acts within state's territory, having effect within state's territory, or within territory under state's law subject to agreement with federal government).

85. See *supra* notes 69-70 and accompanying text.

86. See *id.*

therefore may arguably incorporate any predicate act that parallels a state law crime even if that act occurs abroad.

C. International Forfeiture

RICO's forfeiture powers⁸⁷ make it an attractive weapon against international terrorist organizations.⁸⁸ Because RICO forfeiture is an *in personam* action,⁸⁹ the judgment is not limited to property within any specific jurisdiction, but rather attaches to all the defendant's forfeitable interest.⁹⁰ Therefore, any money invested in an enterprise that affects interstate or foreign commerce is forfeitable regardless of where it is found. Individuals who comprise an "association in fact" enterprise, such as a terrorist organization, are also subject to RICO's forfeiture provisions.⁹¹ The entire interest such individuals held in the terrorist organization would be forfeitable.⁹²

Organizations that have been linked to terrorist activities maintain large annual operating budgets. For example, the Palestine Liberation Organization allegedly has an income of 1.25 billion dollars from investments of over five billion dollars.⁹³ That income is used to finance its operations. The use of the forfeiture provisions against international terrorist organizations would curtail the funds available to these organizations, thereby restricting their ability to operate.

Terrorist organizations have allegedly invested money in the United States and abroad.⁹⁴ Although the forfeiture of assets found within the United States is rudimentary, international forfeiture requires international cooperation. This cooperation is encouraged by mutual legal

87. See 18 U.S.C. § 1963 (1988).

RICO forfeiture is mandatory. Once a defendant is convicted, his interest in the enterprise is automatically forfeit. See *id.*

88. See *infra* notes 90-94 and accompanying text.

Forfeiture is a weapon which is not incorporated in traditional anti-terrorism laws. See 18 U.S.C. § 2331 (1988).

89. See 18 U.S.C. 1963 (1988).

In an *in personam* proceeding, the action is brought against a particular defendant. If convicted, the property which represents the defendant's "forfeitable interest" is forfeited to the government.

90. A "forfeitable interest" which is subject to criminal forfeiture under section 1963 includes "(1) real property [and] (2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities." *Id.*

91. See *United States v. Thevis*, 474 F. Supp. 134, 143 (N.D. Ga. 1979), *aff'd*, 665 F.2d 616 (5th Cir.), *cert. denied*, 459 U.S. 825 (1982).

92. See *United States v. Cauble*, 706 F.2d 1322, 1348 (5th Cir. 1983), *cert. denied*, 465 U.S. 1005 (1984); *United States v. Hess*, 691 F.2d 188, 190-91 (4th Cir. 1982).

93. See J. Adams, *The Financing of Terror: How the Groups that Are Terrorizing the World Get the Money to Do It* 4 (1986).

One author noted, "[a]s it is known that large funds are needed to support terror groups and that money is often invested in Western enterprises, it should be possible to hit them in the purse . . . [thus] separating the killers from their money." C. Dobson & R. Payne, *The Never-Ending War: Terrorism in the 80's*, at 291-92 (1987).

94. See C. Dobson & R. Payne, *supra* note 93, at 291-92.

assistance treaties to which the United States is presently a party.⁹⁵ These treaties allow the United States to request the forfeiture of the "proceeds of crime" or the "fruits and instrumentalities of crime" that are traceable to those countries.⁹⁶ Therefore, in addition to seizing property found within the United States, these treaties allow the government to expand its seizure powers abroad by requesting that the other party to the treaty seize these forfeitable assets.

The power granted in these treaties is invaluable in the war on terrorism, because it permits the government to reach the large portion of terrorist organization's assets which are scattered in a number of different countries. These seizures are likely to have a crippling effect on terrorist operations.⁹⁷

CONCLUSION

International terrorist organizations are continually increasing their attacks on society. The Racketeer Influenced and Corrupt Organizations Act is a potentially powerful weapon available to the federal government in the war on terrorism and should be expanded to facilitate its use against terrorist organizations. The courts should not restrict RICO unreasonably by adding burdensome requirements that are not statutorily mandated. It is time for the courts to remove the barriers that they have created and allow prosecutors to place RICO in the arsenal of the war on terrorism.

Zvi Joseph

95. See Legal Assistance Treaty, Apr. 25, 1988, United States-Thailand (Treaty Doc. No. 100-18); Legal Assistance Treaty, Apr. 13, 1988, United States-Bahamas (Treaty Doc. No. 100-17); Legal Assistance Treaty, Mar. 29, 1988, United States-Belgium (Treaty Doc. No. 100-16); Legal Assistance Treaty, Feb. 22, 1988, United States-Canada (Treaty Doc. No. 100-14).

96. See Legal Assistance Treaty, Apr. 25, 1988, United States-Thailand (Treaty Doc. No. 100-18); Legal Assistance Treaty, Apr. 13, 1988, United States-Bahamas (Treaty Doc. No. 100-17); Legal Assistance Treaty, Mar. 29, 1988, United States-Belgium (Treaty Doc. No. 100-16); Legal Assistance Treaty, Feb. 22, 1988, United States-Canada (Treaty Doc. No. 100-14).

97. See *supra* note 93 and accompanying text.